

Notice of Allowability

Application No.

09/706,583

Examiner

Frances P. Oropeza

Applicant(s)

MUELLER ET AL.

Art Unit

3762

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to Amendment (11/15/04).
2. ☒ The allowed claim(s) is/are 10-23.
3. ☒ The drawings filed on 03 November 2000 are accepted by the Examiner.
4. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) ☐ All b) ☐ Some* c) ☐ None of the:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

* Certified copies not received: _____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

5. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
 6. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
 - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
 - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date _____.
 - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
7. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

1. ☒ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☐ Information Disclosure Statements (PTO-1449 or PTO/SB/08), Paper No./Mail Date _____
4. ☐ Examiner's Comment Regarding Requirement for Deposit of Biological Material
5. ☐ Notice of Informal Patent Application (PTO-152)
6. ☐ Interview Summary (PTO-413), Paper No./Mail Date _____
7. ☒ Examiner's Amendment/Comment
8. ☒ Examiner's Statement of Reasons for Allowance
9. ☐ Other _____

ALLOWANCE

EXAMINER'S AMENDMENT

1. An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

The application has been amended as follows:

Claims 8 and 9 have been cancelled as being drawn to a non-elected invention per the provisional election made without traverse in the paper filed 3/15/04.

Reasons for Allowance

2. Claims 10-23 are allowed. The following is an examiner's statement of reasons for allowance: The subject matter of the independent claims could either not be found or was not suggested in the prior art. The subject matter not found was a method of inducing transformation of capillary blush into arterioles in the patient after a surgical procedure the steps comprising using the processor to estimate an amount of time of exercise needed to induce transformation of capillary blush into arterioles based on the selected heart rate threshold and the duration of time determined in step (f), in combination with the other elements of the claims. The best prior art of record, US 6473644 to Terry, Jr. et al., teaches a method to enhance cardiac capillary growth using a reduced heart rate and notes the benefit of exercise to promote capillary growth (col. 1 @ 7-10; col. 3 @ 31-36; col. 4 @ 22-37; col. 9 @ 55-64), but does not teach using a processor to estimate an amount of time of exercise needed to induce transformation of capillary

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blush into arterioles based on the selected heat rate threshold and the duration of time determined in step (f). Other prior art, US 5244460 to Unger et al., teaches injecting blood vessel growth factor to promote angiogenesis (abstract), but does not teach using a processor to estimate an amount of time of exercise needed to induce transformation of capillary blush into arterioles based on the selected heat rate threshold and the duration of time determined in step (f).

It is noted the instant inventors teach the instant invention in two US patents to Mueller et al.: US 6748258 and US 6524324, but both these documents have the same filing date as the instant application.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

Conclusion

Any inquiry concerning this or earlier communications from the Examiner should be directed to Fran Oropeza whose telephone number is (571) 272-4953. The Examiner can normally be reached on Monday – Friday from 9 a.m. to 5:30 p.m.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's Supervisor, Angela D. Sykes can be reached on (571) 272-4955. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9306 for regular communication and for After Final communications.

Frances P. Oropeza
Patent Examiner
Art Unit 3762

FPO
2/5/05

[Signature]
JEFFREY R. JASTRZAB
PRIMARY EXAMINER
2/10/05